



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

March 15, 1993

Philip Henry Pitts, Esq.
Pitts, Pitts & Thompson
P.O. Drawer 537
Selma, Alabama 36702-0537

Dear Mr. Pitts:

This refers to the December 28, 1992, redistricting plan for city council districts for the City of Selma in Dallas County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on January 14, 1993.

We have considered carefully the information you have provided, as well as Census data and information received from other interested parties. According to the 1990 Census, between 1980 and 1990, the black share of Selma's population increased from 52.1 percent to 58.4 percent. There are eight members of the Selma city council elected from single-member districts, with a ninth councilmember, the council president, elected at large.

As you know, on November 12, 1992, the Attorney General interposed an objection under Section 5 to the first council redistricting plan adopted by the city following the 1990 Census. Our objection was based on that plan's overconcentration of black residents into four districts that were, respectively, 78, 95, 92, and 92 percent black in total population. The district with the next highest black population percentage was District 4, at 44 percent. In addition, the objected-to plan fragmented contiguous black population concentrations among the remaining districts. We also noted that the city considered and rejected an alternative plan, supported by the black community, that balanced the city's black population among the districts and created five districts in which black voters would be able to

elect their chosen candidates. Moreover, the city's redistricting decisions appeared to have been motivated, in part, by a desire to confine black population concentrations into a predetermined number of districts, and thus ensure a continuation of the current white majority on the council.

The redistricting plan now before us has four districts with black population percentages over 70 percent (71, 74, 93, and 97 percent, respectively), and a fifth district with a black population majority of 60 percent (55.8 percent black in voting age population). We recognize that this redistricting plan partially addresses our concerns about the objected-to redistricting plan by decreasing the concentration of black population in two districts and creating a fifth district with a black voting age population majority. But against the backdrop of the history of racial discrimination and racially polarized voting in the city, the new plan still exhibits some of the same pattern of fragmenting black population concentrations, as that identified previously, in an apparent effort to limit the opportunity for black voters to elect more than four councilmembers.

Indeed, the latest redistricting proposal tends only to underscore the absence of legitimate nonracial reasons for the city's failure to adopt available or easily discernible alternative redistricting plans or approaches that would address the concerns about the fragmentation of black population concentrations. The minutes of the December 28, 1992, council meeting reveal that the vote to adopt the submitted plan was along racial lines. For one councilmember the identity of the author of the plan preferred by the black members of the council was sufficient reason to reject it. Another councilmember noted that the alternative plan was unacceptable because it places him in a district with another incumbent. But our review of the rejected alternative plan indicates that it was readily discernible that incumbents could have been placed in separate districts without decreasing the black population percentage in the fifth black majority district. While the city was not required to adopt a particular redistricting plan or approach advocated by the black community, the city's proffered reasons for rejecting such alternative proposals appear to be pretextual.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the December 28, 1992, redistricting plan for the Selma city council.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Finally, we address your response to the court's December 2, 1992, order in Hines v. Smitherman, No. 92-0641-BH-M (S.D. Ala.), that both plans presented to the court, one proposed by the plaintiff-intervenors and one proposed by the original parties were to be "transmitted by the City of Selma, Alabama to the Attorney General of the United States for approval or rejection under Section 5 of the Voting Rights Act, as amended." While you have transmitted a copy of the plan proposed by the plaintiff-intervenors, you have advised us that the plan was not adopted by the city council, as reflected by the city council minutes of December 28, 1992. Accordingly, because the City of Selma did not enact and does not seek to administer that plan and it does not appear to reflect the policy choices of the City of Selma, no determination under Section 5 by the Attorney General was required or appropriate. See 28 C.F.R. 51.18(a) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Selma plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

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Because the Section 5 status of the submitted redistricting plan is a matter before the court in Hines v. Smitherman, we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable William Brevard Hand
U.S. District Judge

Counsel of Record